



CITY COUNCIL

AGENDA REQUEST

AGENDA OF: 08/21/07

**AGENDA
REQUEST NO:** VI A

INITIATED BY: MIKE GOODRUM, COMMUNITY &
ENVIRONMENTAL SERVICES
DIRECTOR *AWG*

**RESPONSIBLE
DEPARTMENT:** COMMUNITY &
ENVIRONMENTAL SERVICES

PRESENTED BY: MIKE GOODRUM, COMMUNITY &
ENVIRONMENTAL SERVICES
DIRECTOR *AWG*

**DEPARTMENT
HEAD:** MIKE GOODRUM, COMMUNITY
& ENVIRONMENTAL SERVICES
DIRECTOR *AWG*

**ADDITIONAL
DEPARTMENT.
HEAD (S):** N/A

**SUBJECT /
PROCEEDING:** CONSIDERATION AND ACTION ON AN ORDINANCE AMENDING CHAPTER 3 OF THE CODE OF
ORDINANCES REGARDING THE REGULATION OF SMOKING IN PUBLIC PLACES.

EXHIBITS: ORDINANCE NO. 1639

CLEARANCES

APPROVAL

LEGAL: MEREDITH WILGANOWSKI, *MW*
ASSISTANT CITY ATTORNEY

**EXECUTIVE
DIRECTOR:** JIM CALLAWAY *Jim Callaway*
COMMUNITY DEVELOPMENT

PURCHASING: N/A

**ASST. CITY
MANAGER:** N/A

BUDGET: N/A

CITY MANAGER: ALLEN BOGARD *Allen Bogard*

BUDGET

EXPENDITURE REQUIRED: \$ N/A

AMOUNT BUDGETED/REALLOCATION: \$ N/A

ADDITIONAL APPROPRIATION: \$ N/A

RECOMMENDED ACTION

Adopt Ordinance No. 1639, which further regulates smoking in public places.

EXECUTIVE SUMMARY

In early Fiscal Year 2006-2007, Mayor Wallace made a detailed presentation to City Council on public health concerns related to smoking in public places. As a result, City Council requested that staff research the smoking ordinances of other municipalities and current smoking practices in Sugar Land.

On February 20, 2007, staff presented the results of this research, which focused on the following three areas: (1) comparing the City of Sugar Land's regulatory environment to that of other cities, (2) current business practices in Sugar Land, and (3) the economic impact of smoking regulations. At this workshop, City Council requested that further research be conducted and directed staff to proceed with developing a more restrictive ordinance.

The results of this additional research along with a draft ordinance were presented to City Council at the July 17th City Council meeting. At this meeting City Council provided input on the draft ordinance and exempting certain public places from regulation. The exemptions included Country Clubs, Retail Tobacco Stores, Tobacco Bars, stage areas for theatrical performances and bars in operation on or before December 31, 2007. For clarification, a bar is defined as an establishment that derives at least 60% of its gross revenues from the sale of alcoholic beverages to customers for on premises consumption. Therefore if a restaurant has a bar located inside the restaurant and gross revenues from alcoholic beverages for the entire establishment do not exceed 60% the establishment will be considered a restaurant and smoking is not allowed anywhere.

Based on City Council discussion, we are proposing City Council adopt Ordinance No. 1639. If adopted, the ordinance would go into effect December 31, 2007.

EXHIBITS

ORDINANCE NO. 1639

AN ORDINANCE OF THE CITY OF SUGAR LAND, TEXAS, AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES REGARDING THE REGULATION OF SMOKING IN PUBLIC PLACES.

WHEREAS, secondhand smoke is a known cause of lung cancer, heart disease, low birth weight, chronic lung ailments and other health problems; and

WHEREAS, secondhand smoke kills over 50,000 non-smoking Americans yearly; and

WHEREAS, studies undertaken across the country demonstrate that there is no significant adverse economic impact as a result of indoor smoking bans; and

WHEREAS, given these considerations, the City Council finds that increasing the number of smoke-free indoor areas is necessary to protect the public health and welfare; NOW, THEREFORE;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUGAR LAND, TEXAS:

Section 1. That Chapter 3, Article VIII of the Code of Ordinances is amended to read as follows:

ARTICLE VIII. SMOKING IN PUBLIC PLACES

Sec. 3-139. Definitions. In this Article:

Bar means an establishment that derives at least 60% of its gross revenues from the sale of alcoholic beverages to customers for on premises consumption.

Enclosed area means a building or portion thereof closed in on all sides from floor to ceiling by solid walls, other than windows and doors.

Place of employment means an enclosed area under the control of a public or private employer where employees work or to which employees have access during the course of employment.

Public place means an enclosed area to which the public is invited or permitted, with or without being a member or the payment of a membership or admittance fee.

Restaurant means an establishment that prepares food for or provides food to the public, guests, students, or employees, and includes a bar area within the restaurant.

Retail tobacco store means any one establishment in which at least 60% of its gross revenues are derived from the sale of tobacco products and smoking accessories to the public.

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

Outdoor arena means any portion of any pavilion, stadium, or athletic field or other similar place, outside an enclosed area, where members of the general public assemble to engage in or witness events.

Tobacco bar means a bar in which the on site sales or rental of tobacco products and smoking accessories for consumption or use on the premises exceeds 20% of gross revenues and into which entry is restricted to individuals 18 years of age and above.

Sec. 3-140. Prohibition of smoking. Except as specifically exempted under this Article, it is unlawful for any person within the City to engage in smoking in:

- (a) The enclosed area of a public place,
- (b) The enclosed area of a place of employment, or
- (c) An outdoor arena.

Sec. 3-141. Reasonable distance. Smoking is prohibited within 25 feet of outside entrances, exits, or wheelchair ramps serving any entrance or exit, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, with the exception of restaurant and bar outdoor seating areas. Smoking is prohibited within five feet of outside entrances of restaurants and bars from their outdoor seating areas.

Sec. 3-142. Areas exempt from regulation. Smoking is allowed in the following establishments if the smoke from the establishment does not permeate into areas where smoking is prohibited under this Article:

- (a) Bars in operation on or before December 31, 2007,
- (b) Tobacco bars,
- (c) Retail tobacco stores,
- (d) Country Clubs, and
- (e) Stage areas of enclosed theaters, if smoking is an integral part of a theatrical performance.

Sec. 3-143. Posting of signs. The owner of any premises in which smoking is prohibited under this Article, must:

- (a) Clearly and conspicuously post and maintain "No Smoking" signs or the international "No Smoking" symbol (a picture of a burning cigarette inside a red circle with a red bar across it) in every place where smoking is prohibited by this Article. The color of the signs, when not of the international type, must have lettering that is distinct, contrasting to the background and easily read. Letters must have a minimum height of one inch. These signs must be posted in English.
- (b) Not permit the use of ashtrays and other extinguishing devices in any area where smoking is prohibited by this Article.

Sec. 3-144. Violations and penalties.

- (a) A person commits an offense if he is smoking in an area where smoking is prohibited by this Article.
- (b) The owner of any premises where smoking is prohibited is required to request that a violator located on the owner's premises immediately extinguish any burning tobacco product. Any knowing or intentional failure to maintain compliance with this Article constitutes an offense.

Section 3. That the provisions of this ordinance are severable and the invalidity of any part of this ordinance will not affect the validity of the remainder of the ordinance.

Section 4. That any person found guilty of violating this ordinance shall be fined not more than \$500.00 for each offense. Notice of the enactment of this ordinance shall be given by publishing the ordinance or its descriptive caption and penalty in the city's official newspaper one time within thirty days of passage.

Section 5. That this ordinance is effective on December 31, 2007.

APPROVED on first consideration on _____, 2007.

ADOPTED upon second consideration on _____, 2007.

David G. Wallace, Mayor

ATTEST:

Glenda Gundermann, City Secretary

Reviewed for Legal Compliance:

Meredith Wilganski